



28 knowingly causes the death of another under any of the following circumstances:

29 (a) the homicide was committed by a person who is confined in a jail or other  
30 correctional institution;

31 (b) the homicide was committed incident to one act, scheme, course of conduct, or  
32 criminal episode during which two or more persons were killed, or during which the actor  
33 attempted to kill one or more persons in addition to the victim who was killed;

34 (c) the actor knowingly created a great risk of death to a person other than the victim  
35 and the actor;

36 (d) the homicide was committed [~~while the actor was engaged in the commission of, or~~  
37 ~~an attempt to commit, or flight after committing or attempting to commit,~~] incident to an act,  
38 scheme, course of conduct, or criminal episode during which the actor committed or attempted  
39 to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child,  
40 forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child,  
41 aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or  
42 intentional injury, aggravated sexual assault, aggravated arson, arson, aggravated burglary,  
43 burglary, aggravated kidnapping, kidnapping, or child kidnapping;

44 (e) the homicide was committed incident to one act, scheme, course of conduct, or  
45 criminal episode during which the actor committed the crime of abuse or desecration of a dead  
46 human body as defined in Subsection 76-9-704(2)(e);

47 (f) the homicide was committed for the purpose of avoiding or preventing an arrest of  
48 the defendant or another by a peace officer acting under color of legal authority or for the  
49 purpose of effecting the defendant's or another's escape from lawful custody;

50 (g) the homicide was committed for pecuniary or other personal gain;

51 (h) the defendant committed, or engaged or employed another person to commit the  
52 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration  
53 for commission of the homicide;

54 (i) the actor previously committed or was convicted of:

55 (i) aggravated murder, Section 76-5-202;

56 (ii) attempted aggravated murder, Section 76-5-202;

57 (iii) murder, Section 76-5-203;

58 (iv) attempted murder, Section 76-5-203; or

- 59 (v) an offense committed in another jurisdiction which if committed in this state would  
60 be a violation of a crime listed in this Subsection (1)(i);
- 61 (j) the actor was previously convicted of:
- 62 (i) aggravated assault, Subsection 76-5-103(2);
- 63 (ii) mayhem, Section 76-5-105;
- 64 (iii) kidnapping, Section 76-5-301;
- 65 (iv) child kidnapping, Section 76-5-301.1;
- 66 (v) aggravated kidnapping, Section 76-5-302;
- 67 (vi) rape, Section 76-5-402;
- 68 (vii) rape of a child, Section 76-5-402.1;
- 69 (viii) object rape, Section 76-5-402.2;
- 70 (ix) object rape of a child, Section 76-5-402.3;
- 71 (x) forcible sodomy, Section 76-5-403;
- 72 (xi) sodomy on a child, Section 76-5-403.1;
- 73 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 74 (xiii) aggravated sexual assault, Section 76-5-405;
- 75 (xiv) aggravated arson, Section 76-6-103;
- 76 (xv) aggravated burglary, Section 76-6-203;
- 77 (xvi) aggravated robbery, Section 76-6-302; or
- 78 (xvii) an offense committed in another jurisdiction which if committed in this state  
79 would be a violation of a crime listed in this Subsection (1)(j);
- 80 (k) the homicide was committed for the purpose of:
- 81 (i) preventing a witness from testifying;
- 82 (ii) preventing a person from providing evidence or participating in any legal  
83 proceedings or official investigation;
- 84 (iii) retaliating against a person for testifying, providing evidence, or participating in  
85 any legal proceedings or official investigation; or
- 86 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 87 (l) the victim is or has been a local, state, or federal public official, or a candidate for  
88 public office, and the homicide is based on, is caused by, or is related to that official position,  
89 act, capacity, or candidacy;

90 (m) the victim is or has been a peace officer, law enforcement officer, executive  
91 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,  
92 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,  
93 is caused by, or is related to that official position, and the actor knew, or reasonably should  
94 have known, that the victim holds or has held that official position;

95 (n) the homicide was committed:

96 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar  
97 device which was planted, hidden, or concealed in any place, area, dwelling, building, or  
98 structure, or was mailed or delivered; or

99 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;

100 (o) the homicide was committed during the act of unlawfully assuming control of any  
101 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any  
102 valuable consideration for the release of the public conveyance or any passenger, crew  
103 member, or any other person aboard, or to direct the route or movement of the public  
104 conveyance or otherwise exert control over the public conveyance;

105 (p) the homicide was committed by means of the administration of a poison or of any  
106 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

107 (q) the victim was a person held or otherwise detained as a shield, hostage, or for  
108 ransom;

109 (r) the homicide was committed in an especially heinous, atrocious, cruel, or  
110 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious  
111 physical abuse, or serious bodily injury of the victim before death; or

112 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or  
113 after death, in a manner demonstrating the actor's depravity of mind.

114 (2) Aggravated murder is a capital felony.

115 (3) (a) It is an affirmative defense to a charge of aggravated murder or attempted  
116 aggravated murder that the defendant caused the death of another or attempted to cause the  
117 death of another:

118 (i) under the influence of extreme emotional distress for which there is a reasonable  
119 explanation or excuse; or

120 (ii) under a reasonable belief that the circumstances provided a legal justification or

121 excuse for his conduct although the conduct was not legally justifiable or excusable under the  
122 existing circumstances.

123 (b) Under Subsection (3)(a)(i), emotional distress does not include:

124 (i) a condition resulting from mental illness as defined in Section 76-2-305; or

125 (ii) distress that is substantially caused by the defendant's own conduct.

126 (c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the  
127 reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the  
128 viewpoint of a reasonable person under the then existing circumstances.

129 (d) This affirmative defense reduces charges only as follows:

130 (i) aggravated murder to murder; and

131 (ii) attempted aggravated murder to attempted murder.

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**Legislative Review Note**

**as of 9-26-05 8:13 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**